IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12-4-2006

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Writ Petition No.4685 of 2006
W.P.M.P.No.5078 of 2006

V. Kanagasabapathy ... Petitioner

Vs.

1. The Deputy Inspector General of Police,
Villupuram Range, Villupuram.

2. The Additional Superintendent of Police,
Prohibition Enforcement Wing,
Cuddalore. ... Respondents

This writ petition has been filed under Article 226 of Constitution of India, for issuance of a writ of certiorarified mandamus to call for the records pertaining to the order of the first respondent passed in his proceedings No.D I(3) PR 44/05, dated 24.6.2005 formulating a charge memo against the petitioner and quash the same and direct the respondents to drop all further action in P.R.44/05, with all consequential monetary and service benefits.

For Petitioner : Mr.S.Ravi
For Respondents : Mrs.D.Malarvizhi,
Government Advocate

O R D E R

Prayer in the writ petition is the quash the proceedings of the first respondent dated 24.6.2005 and direct the respondents to drop all further action in PR No.44/2005 with all consequential monetary and service benefits.

2. The brief facts as stated in the affidavit are that the petitioner joined the Police service as direct Sub Inspector of Police in the year 1987 and was promoted as Inspector of Police in the year 1999. According to the petitioner, he received several rewards for his efficient services and he was subjected to only three minor punishments. On 24.6.2005, the first respondent issued a charge memo in PR.44/05 under

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Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955. The allegations in the charge memo was that on 23.1.2005, petitioner threatened one Kumar @ Rajkumar at his residence at 12.35 to give evidence in his favour in Crime No.4 of 2000 before the competent Court and also threatened his brother Ganesan and the said request having not been obliged, the petitioner scolded them by mentioning their caste name and therefore a criminal case in crime No.160 of 2005 was registered on 24.1.2005 at 8.30 a.m. against the petitioner under sections 143, 448, 506(1) IPC read with Section 3(1)(10) of the Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act, 1989. The said criminal case was charge sheeted before the Judicial Magistrate Court, Tirunelveli, as C.C.No.10 of 2005 and later committed to the Sessions Court in S.C.No.56 of 2005.

3. Petitioner states in the affidavit that a departmental enquiry, though initiated, was not proceeded with till December, 2005. According to the petitioner, on 16.12.2005, the Sessions Court, Tirunelveli, honourably acquitted the petitioner of the charges in crime No.160 of 2005 in its judgment in S.C.No.56 of 2005, with a specific finding that the Complainant Kumar @ Rajkumar gave false and motivated complaint. Petitioner has now filed this writ petition to quash the charge memo on the ground that he was acquitted in the criminal case, as the allegation in both the departmental enquiry and the criminal case are one and the same.

4. At this juncture, it is useful to refer to the charge framed againsnt the petitioner. The charge against the petitioner is that he threatened one Kumar @ Rajkumar on 23.10.2005 at 12.30 in the night at his residence and his involvement in Cr.No.160 of 2005 on the file of the Palayamkottai Police station. No other allegation is made in the charge memo issued by the department. Referring to the charge memo, the learned counsel appearing for the petitioner argued that the criminal case as well as the departmental proceeding are identical/on same allegation and the petitioner having been acquitted in the criminal case, there is no purpose in proceeding with the departmental proceeding. The learned counsel cited two judgments of the Division Bench of this Courts reported in (2006) 1 MLJ 146 (P.Ramasamy v. Government of Tamil Nadu) and (2006) 1 MLJ 169 (District Revenue Officer, Erode v. R.Palanisamy) and argued that in the above cases, the Division Bench set aside the departmental proceedings because of the identity of charge based on the acquittal in the criminal case.

5. The learned Government Advocate relied on the folowing contentions made in the counter affidavit.

> "I Submit that the averments made in para 5 it is true that the criminal case registered against him in Palayamkottai Cr.No.160/05 u/s.143, 448, 506(1) IPC r/s 3(1)(10) SC/ST Prevention of Atrocities Act, 1989

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on 24.01.2005 ended in acquittal on 16.12.2005 by Hon'ble Sessions Court, Tirunelveli in SC.56/05. In para 28 of the judgment the Hon'ble Judge has observed and suspected that the case might have been given falsely by the complainant Thiru.Kumar @ Rajkumar due to motive.

I submit that with regard to the averments made in para 6 that the power to take disciplinary action is vested with disciplinary authority in departmental proceeding the rule for finding is "Balance of Probability" and not proof beyond reasonable doubt. On the instant date, the petitioner was on leave. Hence it is his responsibility to prove that he was not involved in the incident. The petitioner has to face the departmental enquiry to put-forth his defence so as to disprove the charge against him. He is at liberty to file his defence documents and disprove the charge levelled against him.

I submit that with regard to the averments made in para 7 the Hon'ble Sessions Judge in para 28 of the judgment has stated and suspected that the case might have been given falsely due to motive between Rajkumar and the petitioner since there were several cases registered against the complainant Rajkumar and warrants were also pending against him."

The learned Government Advocate ultimately submitted that it is for the department to decide as to whether to proceed with the enquiry or not and for that purpose, the petitioner cannot file the writ petition to quash the charge memo.

6. Heard the learned counsel for the petitioner as well as the learned Government Advocate and I have considered the rival submissions of the counsels on either side.

7. A perusal of the charge memo, impugned in this writ petition discloses that the charge framed against the petitioner both in the departmental proceeding as well as in the criminal case are one and the same. Therefore it has to be taken as both the charges are arising out of the same incident and same set of facts. The Criminal Court in S.C.No.56 of 2005, after an elaborate discussion of evidence, found that the criminal complaint was given due to some other motive and there is no evidence to prove that the petitioner went to the house of the complainant and threatened him by calling his caste name and ultimately acquitted the petitioner from the offences.

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8. A Division Bench of this Court while dealing with a similar question in the case reported in (2006) 1 MLJ 169 (District Revenue Officer, Erode v. R.Palanisamy) in paragraphs 4 and 5 held as follows,

> "4. The only point for consideration in this writ petition is, whether the Tribunal is justified in issuing direction to the Revenue Administration to proceed against the applicant in accordance with the decision in Criminal Court ?
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> 5. The first respondent herein while working as Revenue Inspector, Kanjkoil Firka in Perundurai Taluk of Erode District during the period from 6.8.1981 to 29.9.1982, he was charged that he had misappropriated an amount of Rs.96,206.41 during the said period. A criminal case was registered against him in crime No.589 of 1982 under Secs.420, 409 and 477-A read with Sec.109 I.P.C., and the same was taken on file in C.C.No.110 of 1990 of the Judicial Magistrate's Court, Perundurai. During the pendency of the criminal case, charges were framed under Rule 17(b) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules and he was dismissed from service as per District Revenue Officer's proceedings dated 6.7.1986. Against this order, he preferred an appeal before the Special Commissioner and Commissioner of Revenue Administration, Chennai, and the latter remanded back the matter for fresh disposal for rectification of certain procedural irregularities. The first respondent was placed under suspension again and subsequently fresh charges were framed against him on 10.7.1990. By orders of the Administrative Tribunal in O.A.No.5011 of 1993 and in view of the fact that the disposal of the criminal case takes longer time, he was allowed to join duty. The grievance of the Revenue administration is that because of the dilatory tactics adopted by the first respondent, the departmental proceedings could not be completed. It is also their claim that even after acquittal by the Criminal Court, they are free to proceed with the departmental enquiry. Learned Government Advocate basing reliance on Ajit Kumar Nag v. General Manager, Indian Oil Corporation Limited, 2005 AIR SCW 4986, would contend that acquittal by Criminal Court will not preclude the department from holding departmental proceedings. In the impugned order, it is true that the Tribunal has directed the department to proceed based on the result of the criminal case. In other words, as per the direction of the Tribunal, if the criminal case ended

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in acquittal, the department is barred from proceeding further or else they are free to proceed with the departmental enquiry. It is settled law that acquittal by a Criminal Court would not debar an employer/department from execising power in accordsance with the rules and regulations in force. The two proceedings, viz., criminal and departmental are entirely different. They operate in different fields and have different objectives. The object of criminal trial is to inflict appropriate punishment on the offender, whereas the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose on him penalty in accordance with Service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. Likewise, the degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused beyond reasonable doubt, he cannot be convicted by a Court of law. Whereas, in departmental enquiry penalty can be imposed on the delinquent officer on a finding recorded on the basis of the preponderance of probability. Acquittal of the accused by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Revenue administration. The contention that since he was acquitted by the Criminal Court, the department is completely debarred to proceed with the enquiry cannot be accepted. However, as observed in M.Paul Anthony v. Bharat Gold Mines Limited, AIR 1999 SC 1416, since the facts and the evidence in both the proceedings, viz., departmental proceedings and the criminal case were the same, without there being an iota of difference, the distinction which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable. In the case on hand, the facts and the evidence in both the proceedings, viz., departmental and criminal were the same and in view of acquittal of the criminal case on merits, we are of the view that the Revenue administration is not justified in pursuing the departmental enquiry."

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The crux of the issue is when the facts and evidence in the criminal proceeding and departmental proceeding are same, the department will not be justified in pursuing the departmental proceeding after acquittal in the criminal case. The Division Bench in the above referred decision, followed various decisions of the Honourable Supreme Court and quashed the charge memo.

9. In the other decision reported in (2006) 1 MLJ 146 (P.Ramasamy v. Government of Tamil Nadu) also the Division Bench in para 3 held as under,

> "3. We have already extracted the three charges levelled against the petitioner. It is also relevant to note that simultaneously a criminal case was also launched against the petitioner and he was charged for screening of evidence and protecting the accused who was possessing the counterfeit currency notes giving false information punishable under Sec.221, read with Sec.489 (E), I.P.C., and punishable under Sec.221, IPC., for dereliction of duty by a public servant with intentionally failing to arrest the offender. Before the Sessions Court, prosecution has examined as many as 12 witnesses and produced several documents in support of the charges. After analysing the evidence in detail, the learned Assistant Sessions Judge has found that the eviddence let in on the side of the prosecution is not sufficient to connect the accused with the charges and the prosecution case was not proved beyond all reasonable doubts and concluded that the accused is not guilty of all the charges and acquitted him. As said earlier, the said order was passed on 2.11.1995. The disciplinary authority, viz., Deputy Inspector General of Police, Vellore Range/fifth respondent herein, has passed an order on 24.1.2000 awarding punishment of reduction in rank as Sub-Inspector of Police for a period of two years without considering the decision of the Criminal Court. It is not in dispute that irrespective of the verdict of the criminal Court, either acquittal or conviction, undoubtedly, the Department can proceed with the departmental enquiry in respect of the charges levelled against the officer. However, if the criminal Court acquitted the very same person on merits, on ground that the charges framed against him had not been proved, the Department cannot ignore the said order of acquittal. It cannot be expected that all cases in criminal proceedings on the very same set of facts will end in acquittal and the departmental action should not be proceeded with. It is settled law that if the acquittal in the criminal proceedings is not an

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honourable one, it is always open to the Department to proceed with the departmental proceedings or enquiry. An honourable acquittal would only mean an acquittal which is free from any doubt. In the case on hand, the judgment of the Sessions Court dated 2.11.1995 amply shows that after analysing the prosecution case, and the oral and documentary evidence, the learned Sessions Judge after finding that there is no acceptable material or evidence to connect the accused with the crime, acquitted him from the charges. The very same charges had been framed by the Department and at the time of passing of the final order by the disciplinary authority viz., on 24.1.2000, the judgement of the criminal Court dated 2.11.1995 could very well be available before him. Unfortunately, the disciplinary authority has not taken it for consideration and not even made a reference of the judgment of the Criminal Court in its order."

10. Applying the proposition laid down in the above referred Division Bench decisions of this Court to the facts of this case, as the charge is one and the same in both the criminal case and in the departmental proceeding and in view of the fact that the criminal Court acquitted the petitioner on merits, it is not desirable on the part of the respondents to proceed with the departmental proceeding. Consequently, the impugned charge memo is liable to be set aside in accordance with the decisions cited supra.

11. The writ petition is therefore allowed and the impugned proceedings of the first respondent dated 24.6.2005 is set aside. No costs. Connected WPMP No.5078 of 2006 is closed.

Vr

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Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Deputy Inspector General of Police,
   Villupuram Range, Villupuram.

2. The Additional Superintendent of Police,
   Prohibition Enforcement Wing, Cuddalore.

+ 1 CC To Mr.S.Ravi, Advocate, SR NO.18214.

W.P.No.4685 of 2005

JE(CO)
RVL 18.04.2006

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